The Coronavirus and its impact on Rent Collection
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Have you prepared a rent abatement/rent deferment strategy? The Cheesecake Factory announced on Thursday that they would not be making their April lease payment to any of their Landlords across the country. Good for them for proactively communicating but how as a Landlord would you respond to this? More significantly, if the Cheesecake Factory can’t make their lease payments how likely is it that smaller, less well capitalized companies will be able to pay their rent during this serious Coronavirus driven, economic downturn?

Your retail tenants are on the frontline of the negative economic impact but the ripple effect is wide ranging affecting most commercial tenants including office, industrial and medical. It is likely you have already heard from some tenants requesting a deferment or abatement and unfortunately there will probably be more such requests. Here are a few tips to help you establish a strategic plan.

A. As with all major management decisions affecting a property’s revenue stream, communication with the Owner is necessary and communication with the Lender may also be necessary. Mortgage terms may require lender approval for certain rent modifications.

B. Frequent and documented communication with your tenants is essential. Some managers have proactively contacted certain tenants and inquired about their rent paying capacity. It is counterintuitive to contact a tenant to ask them in advance if they are going to pay their next rent payment but these are extraordinary times and in some cases that may be effective.

C. Regardless of whether or not you directly discuss rental payments it is important to talk with your tenants and gain an understanding of how their business has been impacted.

D. You should know their current situation and what if anything you can do to support them. Of course if you directly ask that question be prepared for the response which may well be, “Mr. Landlord will you please defer or abate my April (May, June…) rent payment?”

E. In most cases abating rent is a non-starter but are you prepared to grant a rent deferment and if yes, under what conditions and on what terms? Whatever you and your tenant discuss and agree upon it should all be documented. The tenant should put their request in writing and the Landlord should respond in writing and most likely with a binding agreement.
F. There are numerous ways to structure a rent deferment and the business terms and legal terms will need to be approved by your Owner and his attorney. Some things to consider:
   a. Will the deferment include forgiveness of any late payment penalties and interest?
   b. When will the deferred rent be due; at the end of a specific period, over time with partial payments, at the end of the year? What are the payback terms, if any?
   c. Should you add to the term of the lease? For example; 1 month additional rent term for each month of rental deferment.
   d. Will you require the tenant to show cause for the rent deferment request and/or provide you with periodic financial condition reports?
   e. What are the consequences if the tenant does not pay the deferred rent or any subsequent rent payments?

G. This is the time to be extra proactive with your rent collection efforts and it is vital that you closely monitor for timely payments. Do not let unpaid rent go beyond the due date without having a conversation with your tenant. Some tenants may not want to talk with the Landlord and tell them they are unable to pay their rent. Unfortunately there may be other tenants who try to take advantage of the situation and use it as an excuse for not paying rent. Non-paying tenants may be hoping the Landlord does not contact them but do not let that happen. By the time you get to the 10th of the month you should know exactly who has not paid rent, what their situation is and have a rent payment plan.

Most importantly….communicate and document. Communicate with all stakeholders and document all conversations and agreements.

This is a stressful and extraordinary time and everyone is being required to do their part to help our country and our citizens overcome this medical crisis and ultimately restore our economy. Among other things we all need to exercise a good deal of patience and compassion.

The Institute of Real Estate Management has a helpful podcast on rent collection strategies that may be found at https://vimeo.com/400049789

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